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**Beverly Health and Rehabilitation Services, Inc., and its Wholly Owned Subsidiary Beverly Enterprises-Pennsylvania, Inc. d/b/a HAIDA Manor and Service Employees International Union, Local 585, AFL-CIO, CLC.** Case 6-CA-29363

January 26, 1998

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX  
AND LIEBMAN

Pursuant to an amended charge filed on December 11, 1997, the General Counsel of the National Labor Relations Board issued a complaint on December 11, 1997, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 6-RC-11417 (formerly 7-RC-21125). (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On December 22, 1997, the General Counsel filed a Motion for Summary Judgment. On December 29, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain, but attacks the validity of the certification on the basis of its contention, rejected in the representation proceeding, that the certified unit is inappropriate because the licensed practical nurses who constitute the unit are supervisors within the meaning of the Act.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh*

*Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**Findings of Fact**

**I. JURISDICTION**

At all material times, the Respondent, a California corporation, with offices and places of business located throughout the United States, including a facility in Hastings, Pennsylvania, has been engaged as a health care institution in the operation of a nursing home providing in-patient medical and professional care and services for the elderly, sick, and infirm. During the 12-month period ending October 31, 1997, the Respondent in conducting its business operations described above, derived gross revenues in excess of \$100,000, and purchased and received at its Hastings, Pennsylvania facility, goods valued at more than \$5000 directly from points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held October 10, 1997, the Union was certified on October 21, 1997, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time licensed practical nurses (LPNs) employed by the Employer at its HAIDA Manor facility located in Hastings, Pennsylvania; but excluding all other employees, service and management employees, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

Since about October 28, 1997, the Union has requested the Respondent to bargain and, since about November 4, 1997, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By refusing on and after November 4, 1997, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate

unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enf'd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enf'd. 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Beverly Health and Rehabilitation Services, Inc., and its wholly owned subsidiary Beverly Enterprises-Pennsylvania, Inc. d/b/a HAIDA Manor, Hastings, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Service Employees International Union, Local 585, AFL-CIO, CLC, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time licensed practical nurses (LPNs) employed by the Employer at its HAIDA Manor facility located in Hastings, Pennsylvania; but excluding all other employees, service and management employees, professional employees, guards and supervisors as defined in the Act.

(b) Within 14 days after service by the Region, post at its facility in Hastings, Pennsylvania, copies of the

attached notice marked "Appendix."<sup>1</sup> Copies of the notice, on forms provided by the Regional Director for Region 6 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 4, 1997.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 26, 1998

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William B. Gould IV, Chairman

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Sarah M. Fox, Member

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Wilma B. Liebman, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

#### APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Service Employees International Union, Local 585, AFL-CIO, CLC as the exclusive representative of the employees in the bargaining unit.

<sup>1</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time licensed practical nurses (LPNs) employed by us at our HAIDA facility located in Hastings, Pennsylvania; but excluding all other employees, service and management employees, professional employees, guards and supervisors as defined in the Act.

BEVERLY HEALTH AND REHABILITATION  
SERVICES, INC., AND ITS WHOLLY  
OWNED SUBSIDIARY BEVERLY ENTER-  
PRISES-PENNSYLVANIA, INC., D/B/A  
HAIDA MANOR